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18 January 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with Senator Jacob Javits (R., N. Y.) on
S. 2515, Equal Employment Opportunities Enforcement Act

1. Mr. Maury and I met with Senator Javits and his assistant on the Labor and Public Welfare Committee, Eugene Mittelman (General Counsel of the Minority staff), concerning S. 2515, Equal Employment Opportunities Enforcement Act.

2. Mr. Maury explained that Senator Peter Dominick (R., Colo.), who completely supports our position on the legislation, had recommended that we see Senator Javits personally on the basis that any amendment Javits proposes would be accepted, and Dominick thought that Javits would support our position. Mr. Maury then outlined our problem as covered in the material prepared for this purpose. (Javits had this material, which I had previously given to Mittelman, on his desk.) Senator Javits was courteous and friendly throughout, but said he could go no further than an amendment which would in effect provide for in camera proceedings for the Agency during appeals either to the Civil Service Commission or the Federal courts. This position was based on information Mittelman had received from the Civil Service Commission (presumably Irving Kator) that the Agency was fully subject to the current Executive Order 11478 and that on appeal to the Civil Service Commission by an Agency employee, including one terminated in the interest of the United States under the authority of Section 102(c), the authority of the Commission to enforce an appropriate remedy, including reinstatement, would prevail. We attempted to refute this premise without success.

3. Javits said he would recommend that the amendment accomplishing the above be proposed by the House side when the bill went to conference and said he would set this up. He instructed Mittelman to get in touch with us to work out the language of the amendment.

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4. We thanked Javits for his consideration, but made it clear that his proposal did not necessarily solve our problem and that subjecting the Director's judgment under Section 102(c) consciously to outside review was not in keeping with a long line of other statutes, court cases, and Executive Orders.

5. Although Javits was firm in his position, it is clear that his position is based upon erroneous information relating to powers and authorities of Executive Order 11478 vis-a-vis Section 102(c), and it is possible that if he is convinced his premise is in error, he would support our initial position.

6. In view of the above, it is recommended our next steps be:

- a. clarify with the Civil Service Commission whether their position as reported by Mittelman was accurately reported and if so, to determine if their position is firm (this to be accomplished by Director of Personnel in conjunction with OGC);
- b. determine whether in camera proceedings and all that it entails would hold up under contest.

STATINTL



Assistant Legislative Counsel

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